

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Rudy Stanko,

Civil No. 07-4387 (JNE/JJG)

Petitioner,

v.

Dwight L. Fondren, et al.,

Respondents.

**REPORT
AND
RECOMMENDATION**

This matter returns on this Court's order of November 11, 2007 and on a motion, by petitioner Rudy Stanko, for an Article III judge (Doc. No. 4). Mr. Stanko is proceeding pro se. The respondents are represented by Jeffrey S. Paulsen, Assistant United States Attorney. These issues are properly handled through a report and recommendation in accordance with 28 U.S.C. § 636 and Local Rule 72.1(a).

Mr. Stanko commenced this litigation by filing a petition for a writ of habeas corpus on October 26, 2007. Through an order on November 11, 2007, this Court dismissed the petition without prejudice, holding that his petition did not seek habeas relief and that his concerns are properly raised in a civil action. As a result, the order directed Mr. Stanko to file a complaint on or before December 10, 2007, or this Court would recommend dismissal of this litigation without prejudice.

Rather than filing a complaint, Mr. Stanko objected to the November 11 order. With this objection, Mr. Stanko included his motion for an Article III judge. Through an order on January 3, 2008, Judge Joan Ericksen overruled Mr. Stanko's objection and affirmed the November 11 order. Mr. Stanko then appealed to the Eighth Circuit, which has since dismissed the appeal for

lack of jurisdiction. Mr. Stanko has not filed a complaint in the time allowed by the November 11 order.

In his motion, Mr. Stanko arguably challenges the authority of a Magistrate Judge to rule on matters in this litigation, but he offers no support for this position. This Court has exercised its authority in accordance with the U.S. Constitution and 28 U.S.C. § 636. And the sole order issued by this Court in this litigation was previously affirmed by Judge Ericksen. Because Mr. Stanko's motion lacks merit and is not based on any live dispute, it is properly denied.

Being duly advised of all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT:**

1. Mr. Stanko's motion for an Article III judge (Doc. No. 4) be **DENIED**.
2. This matter be **DISMISSED WITHOUT PREJUDICE**, the litigation closed and judgment entered.

Dated this 29th day of July, 2008.

s/ Jeanne J. Graham

JEANNE J. GRAHAM
United States Magistrate Judge

NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this report and recommendation by filing and serving specific, written objections by **August 12, 2008**. A party may respond to the objections within ten days after service thereof. Any objections or responses filed under this rule shall not exceed 3,500 words. The district court judge shall make a de novo determination of those portions to which objection is made. Failure to comply with this procedure shall forfeit review in the United States Court of Appeals for the Eighth Circuit.